

SUBJECT: Omnibus water package

COMMITTEE: Natural Resources: committee substitute recommended

VOTE: 9 ayes--Craddick, Shaw, Geistweidt, Buchanan, Clark,  
Godwin, J. Harris, Roberts, Staniswalis

0 nays

WITNESSES: Same as for HJR 6 (see preceding analysis)

DIGEST: Water Conservation and Development

In addition to \$800 million in new state water bonds authorized by the constitutional amendment proposed in CSHJR 6, CSHB 2 would authorize the Legislature to appropriate state money to the Water Development Board's Water Loan Assistance Fund, and to use money from the loan fund for water conservation, water development, water-quality enhancement, flood control, drainage, subsidence control, aquifer recharge, chloride control, agricultural soil and water conservation, or any combination of these purposes. The bill would also establish a \$250-million bond-insurance program through which the state would back \$500 million worth of local political subdivisions' bonds for any of the above purposes. The state would charge issuers fees for the insurance and would deposit the fees in a reserve fund to be used in case of defaults.

The bill would define water conservation as both developing supply and reducing consumption, and it would require recipients of Water Development Fund aid to adopt or to have already implemented a water-conservation program approved by TDWR. The department could help recipients devise such programs. The bill specifies that conservation programs could include requirements for alternate-day lawn watering, changing building codes, retrofit and educational programs, mandatory metering, rate structures, and drought planning. The Texas Water Commission could also require applicants for water-use permits to submit conservation plans. Applicants would have to show that they would avoid waste and conserve water with "reasonable diligence" to obtain a permit.

The bill would allow the Water Development Board to add to its biennial operating budget request a list of needed projects for which funding is not available in the Water Loan Assistance Fund. (This fund is part

DIGEST: of the Water Assistance Fund created by the 67th  
(continued) Legislature with a \$40-million appropriation.) The  
board would project the amount of funds needed for  
each project.

The bill would remove the requirement that the Water Development Board give notice and hold hearings on applications for assistance. It would make private non-profit, consumer-owned water-supply corporations eligible for the bond-insurance program. For state funding of regional sewage-treatment plants, the bill would remove the precondition that funds for proposed projects be otherwise unavailable. It would authorize the Water Development Board to pay for planning such regional facilities out of its research and planning fund by contracting with local political subdivisions.

#### Agricultural Water Conservation

The bill would create a board and a fund for agricultural soil and water conservation. The board would consist of the executive directors of the Department of Water Resources, the State Soil and Water Conservation Board, the directors of the Texas Agricultural Experiment Station and the Texas Agricultural Extension Service, and the Commissioner of Agriculture. Money for the fund would come partly from direct appropriations, partly from a one-time, \$10-million transfer from the Water Assistance Fund, and from future legislative transfers from the Water Assistance Fund.

The fund would be used for ten specified purposes:

- Technical assistance and educational programs for political subdivisions in agricultural water conservation.
- Purchase of technical and educational equipment by local political subdivisions.
- Grants to ground-water conservation districts for technical assistance, including equipment purchases.
- Eradication of brush and weeds that consume sub-surface water.
- Conservation research, including artificial aquifer recharge and secondary recovery of ground water.

CSHB 2  
page three

DIGEST:  
(continued)

- Desalinization of heavily mineralized water to put it to more productive use.
- Weather modification.
- Programs to help individual landowners create water-conservation plans in conjunction with local soil- and water-conservation districts.
- Research on water-efficient and native crops and plants.
- Drainage and flood control on agricultural land.

Protection of Bays and Estuaries and Instream Uses

In granting permits for new water-development projects within 200 river miles of the coast, the Texas Water Commission would have to impose conditions necessary to maintain "beneficial inflows" to the bays and estuaries on the Gulf Coast. Beneficial inflows would be defined as enough fresh water to maintain "a productive habitat" for economically important fish and shellfish.

In deciding whether such permit conditions are needed, the commission would have to consider:

- Whether reliable studies showed a need for fresh water in the affected bay or estuary system.
- Whether any natural or manmade conditions existed that might prevent fresh-water flows from benefiting productivity.
- How much water the upstream applicant and the applicant's customers (if any) needed, and for what purpose.
- How the public welfare would be affected by not including conditions in the permit to maintain the productive habitat of the bay or estuary system.
- How the public welfare would be affected by denying all or part of the permit.
- That domestic, municipal, industrial, irrigation, mining, mineral recovery, and hydroelectric power uses take precedence by law over all other uses.

CSHB 2  
page four

DIGEST:  
(continued)

In emergencies, bay and estuary protection could be suspended. (A hearing would be held within 15 days to decide whether to continue the suspension.)

The bill would allow the executive director of the Department of Water Resources (TDWR) to name advisory councils, funded by the research and planning fund, for all major bays or estuaries. Each council would include representatives from TDWR, Parks and Wildlife, the Texas Department of Health, the General Land Office, and the conservation districts, reclamation districts, or river authorities operating in the river basins or watersheds that empty into the bay or estuary.

The bill would authorize TDWR, Parks and Wildlife, and other agencies to conduct economic and scientific studies of the bays and estuaries. These studies would be paid for out of the research and planning fund, and would have to meet a Dec. 31, 1989, deadline.

Except for reservoirs in the Sabine River basin, the bill would assign to the Parks and Wildlife Department 5 percent of the dependable supply of water in any new reservoirs that were built within 200 river miles of the coast and in which the Texas Water Development Board owned at least a 5-percent interest. (The dependable supply is the amount of usable water that would exist in a reservoir under severe drought conditions.) Parks and Wildlife could use this water for bays and estuaries and instream uses.

If the board owned less than 5 percent of the dependable supply, Parks and Wildlife's share would equal whatever lesser percentage the board did own. Operating and maintenance expenses attributable to Parks and Wildlife's share of a reservoir would be paid by the local political subdivisions that owned shares of the reservoir. Even if the board sold its part of a reservoir, Parks and Wildlife would retain its share of the dependable yield.

The bill would also require the Texas Water Commission to consider the effects of "existing instream uses" before granting new permits, in some cases after hearing testimony from the Parks and Wildlife Department. The terms "instream uses" refers to the various purposes served by water flowing in stream channels: livestock watering, maintenance of shoreline habitat, and other uses.

CSHB 2  
page five

DIGEST:  
(continued)

Mitigation of Damage to Wildlife Habitat

After evaluating both adverse and beneficial effects on wildlife habitat of issuing a water-use permit, if the commission found a "net adverse impact," it could specify conditions in the permit to offset that impact.

Ground-Water Regulation

Under CSHB 2, whenever TDWR, in monitoring "the underground water situation in the state," found a "critical" area that will have a serious shortage, subsidence, or pollution problem within 20 years, it could set in motion the process of creating a special type of ground-water management district for that area.

Following public hearings in the area, TDWR within 30 days would decide whether to recommend designation of a critical area, set its boundaries (which would have to be coterminous with all or part of at least one underground water reservoir, defined as an aquifer capable of producing 25,000 gallons per day of water), and present pertinent findings to the Texas Water Commission. The commission would hold another hearing and decide either to approve or reject the district. TWC could alter the original boundaries.

If it approved the district, TWC would appoint five temporary district directors, who would have to call an election within 30 days. If voters turned down the district proposal, TDWR could not compel its creation. TWC would have to pay for the election and another election could not be called for 12 months. If voters approved its creation, the district would pay for the election. Newly created districts could issue bonds, levy taxes to pay off the bonds, and assess maintenance and operations taxes up to \$0.50 per \$100 of assessed valuation.

CSHB 2 would also increase the regulatory powers and responsibilities of the type of underground water conservation district that exists under current law. These districts would have to impose a permit system on new wells that pump 25,000 or more gallons a day (instead of allowing districts to require permits only on wells that produce more than 100,000 gallons a day as under current law.) Districts would have to keep drillers' logs of water wells and keep records on new wells and their production. Existing wells capable of pumping between 25,000 and 100,000 gallons per day would be exempt from permit requirements, but owners would have to register them with the district.

CSHB 2  
page six

DIGEST:  
(continued)

CSHB 2 would for the first time allow underground-water districts to buy, sell, and distribute water. They could also impose well fees based on well size or production capacity. Districts could exercise powers of eminent domain without posting money or a bond or paying certain other costs. The bill would exempt from permit, size, alteration, or production requirements any well used for single households, feed lots, dairies, poultry ranches, or other livestock on farms or ranches.

The bill would not take effect unless the constitutional amendment proposed in CSHJR 6 passes.

SUPPORTERS  
SAY:

CSHB 2 is a well-balanced, realistic approach to Texas' growing water crisis. It provides substantial funding for needed water-supply projects and encourages efficient, regional wastewater systems. It lends aid to hard-pressed rural water-supply cooperatives, and makes chloride-control, desalinization, subsidence-control, and aquifer recharge projects eligible for state aid for the first time.

The Water Development Fund has been used primarily to make "hardship" loans to local governments that would otherwise be unable to finance their small-scale water projects. But larger "regionalized" projects would be more efficient, cheaper in the long run, and easier to police than small projects. Under CSHB 2 the state could help with such projects even though they theoretically could find financing elsewhere.

While avoiding unconstitutional state aid to individual farmers, the bill also makes a strong commitment to agricultural soil and water conservation through a new, amply funded agricultural soil- and water-conservation fund. The bill would encourage municipal water conservation as well, by requiring all new recipients of Water Development Fund assistance to have conservation plans.

The bill protects the coastal bays and estuaries to the maximum extent that is economically practical, by funding studies of the coastal ecosystem (the necessary basis for any future management plan), and by requiring the Texas Water Commission to ensure that new projects within 200 river miles of the coast protect both streamside uses and the bays' and estuaries' fresh-water flows. Two hundred river miles is roughly 100 statute miles inland; the coastal zone thus defined is where the vast majority of the fresh water that goes to the bays and estuaries originates. The "back-up" 5-percent allocations of reservoir water controlled by the Parks and Wildlife Department give the state agency charged with overseeing coastal fisheries a further protective tool.

CSHB 2  
page seven

SUPPORTERS  
SAY:  
(continued)

The cost of releases is equitably spread between the state and local political subdivisions. Before Parks and Wildlife receives any allocation, the state must fund a portion of the reservoir's capital cost at least equal to the proportion of the reservoir's water controlled by Parks and Wildlife. The state is in effect paying in this way for the water for the bays and estuaries. Local political subdivisions would pay the 5 percent or less of operations and maintenance costs as part of the price of valuable state financial assistance.

The bill also takes necessary steps toward managing the state's ground water, while retaining the most effective management mechanism--local control. Underground-water conservation districts formed by local initiatives under existing statutory authority would be given added power to use as needed. Simultaneously, TDWR's expertise in identifying ground-water problems in advance of a crisis could lead to other districts' being formed in critical areas, with appropriate powers to conserve and manage. But these special districts could not be created without local approval. In this as well as other respects, CSHB 2 reflects painstaking effort to avoid infringing individual property-owners' rights.

OPPONENTS  
SAY:

CSHB 2 is not a balanced approach to Texas' water problems. It emphasizes expensive water-development projects that are based on unrealistic projections of the state's population and water demand, especially agricultural demand in areas that are already draining their aquifers dry. Texas needs more water development, but not this much; it would be cheaper and sounder public policy to encourage conservation.

The bond-guarantee program in particular is risky. It would not give the local bonds the high ratings and low interest rates proponents expect. Bonds issued directly by the state are simply more secure, and their more advantageous interest rates reflect that security. State bonds typically sell at interest rates four-tenths to five-tenths of a percent lower than the interest on guaranteed local school bonds, for example. The more state-guaranteed bonds are leveraged, the lower their bond rating. Because highly leveraged bonds help saturate the market, they raise issuers' costs. In addition, some of the private entities that would be eligible under this bill are poor risks. The state should reduce its exposure to default liabilities by simply adding \$200 million more to the bonding authorization for the Water Development Fund. Applicants for this aid must show they have a solid financial base before the money is released.

CSHB 2  
page eight

OPPONENTS  
SAY:  
(continued)

CSHB 2 perpetuates the fiction that "conservation" means water development. This definition is so broad that having a "conservation plan" might mean planning to build a reservoir. The agricultural-conservation program does not go far enough: The water that could be saved by a prudent cost-sharing program warrants passage of a separate constitutional amendment to let the state help individual farmers and ranchers. CSHB 2's list of steps that may be taken in conservation programs also needs to be clarified. "Mandatory metering," for example, may be interpreted not to apply to old as well as new facilities, unless the bill is changed to say so. More specific criteria for administering the bill's water-conservation requirements need to be spelled out, too, in order to ensure equitable and consistent evaluation of applications.

If the state is really serious about conservation, all cities, not just the recipients of state aid, should be required to have plans. The fact that the bill authorizes but does not direct the Texas Department of Water Resources to establish an educational and technical-assistance program for water conservation illustrates its lack of a strong commitment to conservation.

The bill would offer only nominal protection to bays and estuaries and instream uses. The level of protection specified is too low: Any amount of estuarine productivity technically constitutes "a productive habitat." And the Texas Water Commission would never really be able to limit upstream users' water consumption to help the bays and estuaries, because every other use has legal priority over the coast's claim. The back-up allocation to Parks and Wildlife is not enough. All reservoirs that affect coastal fresh-water flows should be included in a program to protect the bays and estuaries, not just new ones that the board partly owns and that are within a certain distance of the coast.

Any studies or advisory councils on bays and estuaries should be the responsibility of Parks and Wildlife. TDWR has plenty of scientific expertise, but its policy-making body is too biased in favor of development. Protecting the fisheries is properly Parks and Wildlife's job.

In the section on mitigation, "net" adverse impacts would allow total destruction of some animals' habitat, as long as offsetting habitat for some other animal was set aside.

CSHB 2  
page nine

OPPONENTS SAY: (continued) The ground-water package is good but does not go far enough. Conservation of ground water is important enough to justify state management of critical areas if local residents vote not to form conservation districts.

NOTES: The following provisions of HB 2 as introduced are not found in CSHB 2:

- The requirement of legislative approval of individual water-storage projects in which the state would own a share.
- Partial funding of the agricultural soil-and water-conservation fund out of proceeds from the agricultural-land conversion tax ("rollback tax").
- Authorization for TDWR to designate underground water planning regions.
- Possible annexation of critical ground-water areas to existing districts.

The following provisions of CSHB 2 are additions to HB 2 as introduced:

- Eligibility of nonprofit water-supply corporations for the bond-guarantee program.
- Eligibility of desalinization projects for state assistance.
- Creation of the Agricultural Soil and Water Conservation Board to administer the fund of the same name.
- Partial funding of the Agricultural Soil and Water Conservation Fund by transferring \$10 million from the Water Assistance Fund.
- Exemption of Sabine Basin from bays-and-estuaries requirements.
- The requirement that local political subdivisions pay operations and maintenance costs of Parks and Wildlife's share of reservoirs.